

OBSERVATIONS and REASONS,

Humbly offered to this present

PARLIAMENT,

In the behalf of the

CREDITORS

By a Lover of his Country, Credit, and Trade thereof.

AS for Charity it is so copious a Theme for a Panegyrick, that were there 99 Muses more than there are, they are all too little to praise; and without the assistance of illustrious Assembly, all that has been said and writ in that behalf, is but vain. Though Persons under restraint are more apt to quote the Charitable Acts, Laws, and Customs, of the Jews, the practice of the Romans, and the Government of Mahomet, and the practice of Neighbouring Nations, and so down to this very Time, which is not my business; yet on the contrary, I beg leave to say something in the behalf of the Creditors, whose Wives and Children suffer much by the Extravagancy, or ill Fate of their unfortunate Debtors, and would not oppose a Charitable Act for Poor Prisoners; if it did not much prejudice the Creditors: As by my Observation, I shall only take notice of the Act that was offered the last Session, and of the late Acts for that purpose, viz. the first Act of Car. 2. in the 22^d. and 23^d. Years of his Reign, for the Relief, and Release of poor distressed Prisoners for Debt, which was defective both to the Creditor and Prisoner, discharging none but such as was in Execution, which was grievous and chargeable to the Creditors, to persecute his Debtors to Judgment, or otherways a ruin to the Prisoner if not done. Nor was there any Schedule of Effects delivered of any Debts due to the Prisoner, for the benefit of the Creditors; and it was Morally impossible, That so many trading People in a great City should be discharged, and have no Money owing them, without they did fulfil that part of the Lords

Prayer, Of forgiving their Debtors, as they were forgiven by their Creditors, and so did prevent many Perjuries. I would judge charitably, because that Act was without Limitation of any Sum whatsoever; however by the Act of the 30th. of King Charles II. for further Relief, and Discharge of poor Prisoners for Debt, it appears by the aforesaid Act, that Provision was made for Relief, and Release of such Prisoners, as was in prison for Debt, and Damages, upon the 1st of April 1671. in such way and manner, as is therein Provided and Declared.

Yet notwithstanding which, the Persons of such Prisoners have not been Discharged of their Imprisonment: The word (Debt or Damages) mentioned in the said Act, being Construed doubtful, as not warranting the Discharge of any Prisoner, unless Charged in Execution; by which Act referring to the former they found out their Error in the Words (Debts and Damages) and added these Words, *for Debt, Action, or Trespass, on the Case, which Actions by Prosecution of Law may be Judgments for Debt or Damages, or who have Judgments Entered upon Record against them, for Debt; or upon Outlawry before or after Judgments of Debts, or upon any other Process whatsoever, issuing out of any Court of Law or Equity;* But in this Act, to avoid the suspicion of perjury, though they have made it much after the same manner of the former, without Relief to the Creditors, save only, they have added that good Proviso (as they call it) for the Advantage of the Creditor, viz. *Provided always that no Prisoner shall be discharge'd by virtue of this Act, untill he shall (before the Justices of the Peace, who are hereby empowered to discharge him,) declare upon his Corporal Oath, which*

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Oath

816. m. 18 (5)
695. k. 8 (9)

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Oath the said Justices are hereby appointed to administer, what Effects are belonging to him, what Debt or Debts, are then owing to him within any of his Majesties Domineons, or elsewhere, and by whom, and for what Cause, and upon what Security; of all which a Schedule shall be made in the presence of such Justices, and signed by the Prisoner, and shall be by such Justices returned to the next Sessions, thereto be kept for the better Information of the Creditors of such Prisoners, who, or such of them as will joyn, may thereupon sue for such Debts, or so much thereof as will satisfy them in the Name of the Prisoner, and after the same Recovered and Received, to render the Overplus (their own Debts and Charges deducted) to the Prisoners.

By which Proviso it doth appear, they gave in a List of their Debts, but kept their Writings, Books, and Papers, that proved them; and the List, you see, was to be left at the next Sessions, far from the Creditors who had no Obligation to sue; which Schedule is there to be kept, and remain, for such Creditors as will, may sue, and that must be in the Prisoners Name, who also may Release; and for that Reason very few ever sued the Prisoners Debtors, because the Prisoner had, or might have Released: And several Creditors that did sue in the Prisoner's Name, in behalf of themselves, and justly too, it was easily Objected by the Learned Council of the Law, to say (in the behalf of the rich Debtor) to the Prisoner, with Reflections of him and the Act, *That it was a Cheat, or Juggle between the Creditor and Prisoner to make a worthy rich Man pay a Debt that was trusted, or Money lent above Seven years ago; and notwithstanding the Proof is full and clear, the Lawyers saith, Gentlemen of the Jury, It's impossible a rich Man should owe Money so long; when at the same time he knew he could not pay it with safety: So that by these Means the Prisoner was Non-suited, and a Verdict passed against him to the Damage of his just Creditors.*

The last Session of Parliament there was a Bill proposed, but did not pass, which was much to the same purpose, as the former Acts; but with these additional Faults, neither the Judges taking notice of it, nor the Justices that was to Execute it; but rather a Fine imposed on them for not doing it. The Methods of the whole Act, and Notice, or Summons was irregular, and not one Clause for the Benefit or Relief of the Creditor; nor that only Good Proviso of having the Prisoner to remain in Prison for the space of Six Months before he be discharged by the Act, in which time the Creditors might find out his Estate: And if he had none, that he might know what Imprisonment was, and be mortified for his Prodigality. And it is supposed the same Solicitor, for the poor Pri-

soners, do offer the same Bill, with some little Amendments and Additions, as appears by their Abstract that I saw yesterday; where they have put in the Judges to sit to execute it, who never by any Act had such a trouble put upon them of Sitting, but of Judging and Interpreting the Acts when any Dispute, or Difference might arise from the Execution part, and was always named but in their proper Stations, and not to be at the Discharge of Prisoners, but upon extraordinary Occasion of the Crown, &c. who are not to be Questioned, or Fined, for what they do: For by the Law, what they do, was always looked upon as well done. Nor was it ever before known of any Imposition at the Secretaries Office, as by the Prisoner's Abstract, to impose and publish a Notice for every Prisoner to his Creditors 21 Days in the Gazette of the Sessions, and when the Judges are to sit, which the Publisher of the Gazette is to receive or publish, on payment or tender of 1 Shilling: so long an Advertisement as they propose to tell all they recite, if they could put in 10 into a Gazette, the Number of Prisoners they proposed to be Discharged (sometime extravagantly) talking of 10000. So that in a 104 Gazette a Year, that way will be a 1040 Prisoners, which will be almost 10 Years of Discharging. But suppose a shorter way of 10 Prisoners in an Advertisement, and 10 Advertisements in a Gazette, that is 200 a Week will be a 104 Gazette a Year, and that will be almost 2 Years in Discharging. And at a 104 Gazette for every Creditor, or other Person, it will be a Tax on the People of above 16s. 6d. a piece. And if they omit the buying 1 Gazette in 2 Years, they may miss the Man they want in a 100. Whereas, by a true and exact List, upon Oath, and Printed, as hereafter to be proposed, every Creditor or other Person, may have one that will hold 5 or 6000 Names for a 1d. or 2d. charge in the whole, and not impose or disturb the Gazette, as they would do, and they would have a Clause for New Credit, which will destroy both Prisoner and New Creditor, and the Law will seize all, let them be Journeymen or behave themselves so well to the Old Creditors, that they may give License for New; for if they deserve it, no doubt but the Old Creditors will give it upon their good Behaviour and Reformation, &c.

It is also observed, That all the Charitable Acts are Solicited by the Deputy Goalers, or Under Keepers of Prisons; and the last published himself in the Gazette, at which Mystery I stood amazed, when by the Act they are to have no Chamber Rent. But after a little consideration I found out the Secret



tres; viz. That there was a great many so poor that they did not leave the Rules of the Prison, so much for the Debt due to the Creditors, but at last run away for their Chamber Rent (the Prison and Goaler having consumed that little they had left,) so that now, I believe, they Solicite the Act to this end, that instead of Discharging the poor Prisoners they have ; that those Poor also may come in, who are run away, or at least not able to pay ; so that they will take any thing rather than lose all ; having got what they had, and want now new ones in their room. I find upon a strict enquiry into the Condition of the Prisoners and their Creditors and Debtors, that it doth appear that there are many Prisoners now in Goal, not so much for the Debt of their Creditor, as that his Imprisonment is caused or procured by some Great and Rich Debtor, that may owe the Prisoner much Money upon Account, who finding that he had over Traded himself, and payments grew slow, and when he sends to demand his own, his rich Debtor gets a *Bill in Equity and the poor Man a Stone Dublet*, which I do find is oftener caused by a Rich Debtor than a just Creditor ; for it's always the Interest of the Creditor to preserve his Debtors and keep them from Ruin, but it's generally some Malicious Debtor to the Prisoner, who by his Riches and Liberty over powers him ; and the more colourably to cheat the Prisoner of his Debt, Charges him in Execution to keep him Close, to prevent his coming to clamour amongst the Neighbours, that know much of the truth of the matter, and by the Malice of his Debtor, the Prisoner is kept Close in Execution, to the prejudice of his other just Creditors, where such Debtor, designed he should perish for want, and others that owe him Money as that Debtor, does not pay him ; so that by this hardship of the Debtors to the Prisoners, if they can but starve the Prisoner, as I have known several Debtors have done, till he Die, then saith the combining Debtors, if the Prisoner Die, we save our Debts, and put the Cruelty upon his Creditors ; for if a Prisoner Die in Prison, the Debt's concealed and lost from the Benefit of his real Creditors ; and the Debtors take the Advantage of their Confinement, or their Absconding, or Insolvency, which otherways the Debts due to them, by a good and regular Method in the management of them, might be of great Advantage, Benefit, and Relief, to the Creditor, for we are well Assured, that few Persons pay Money to any Man that hath been a great Trader, or to any Insolvent Person, that has failed and Absconded, or in Goal, because we say they may pay it again to the Creditors, and few People that are to pay Money will want so easie an Excuse,

for there is no Debtor to a Prisoner or an Insolvent person so Ignorant, but knows that tho' there may have been no Commission of Bankrupt taken out, yet hereafter there may, which as it falls out, that Excuse will now help the Creditor, by the Insolvent Person or Prisoners Discovery : Therefore a Bill will be prepared and humbly Presented to the Consideration of this Honourable House, for Relief of the Creditors, and Insolvent Debtors, which doth Enact and Provied a Remedy against the Practices aforesaid, viz.

First, It sets forth how the Creditor no sooner put the Law in Execution against his Debtor, but the Goaler and his Accomplices get what the Prisoner has left, and so defeats the Creditor ; it prevents that by letting the Creditor not have only the Law against the Goaler and Prisoner, but also against the Debtor of the said Prisoner, who gives a Schedule of his Debts and an Oath of the truth of the same to a person appointed for the use of the Creditors.

2. That many Prisoners have more owing than they owe, yet their Debtor takes the advantage of their Confinement, and get Non-suits and Verdicts against them to the Damage of their Creditors, a Clause for a Re-hearing or New Trial for the Creditor.

3. That Merchants, Drapers, Mercers, Goldsmiths, &c, lend their Customer much Money ; besides Goods in their way of Trade, Interest to be allowed for the Money, though not for Goods for the Benefit of the Creditor.

4. That it is above Twelve years since any Charitable Act was made, and for that Reason many Persons Debts due to them may be lost by the Statute of Limitation, but no Statute to be allowed to a Debt that is Entered and Assigned to the Creditors.

5. No Debtor to a Prisoner or Insolvent Person, whose Debts are delivered to the Creditors shall be Protected by any Place or Priviledge, but Parliament.

6. That all Creditors Enter their Charge against the Prisoner within 6 Months, and their Debt to be within the Statute of Limitation, or else not to be allowed to the Damage of the other Creditors.

7. That no person have the Benefit of the Act till he has been Six Months in Prison.

8. That the Goalers are not to certifie as in former Acts who was true Prisoners, but the Prisoners to produce a Record, or other sufficient Testimony besides his own, which will prevent the Goaler from making Sham Prisoners. And the Goaler to refund to the Creditors what Money or Goods, that he has Extorted for Favour or Advice to the Prisoner, except his just Fees, or Chamber Rent.

9. In former Acts the Prisoners gave i their Effects or Debts, to the several Clerks ;

of the Peace in the several Counties; where they were kept without any Relief to the Creditors, but are by this Act delivered to a person appointed by the Creditors, where the Major part of them in Number, and Value Agree of Methods and Rules, for the prosecution of the Prisoners Debtors, for the benefit the Creditors.

10. A Clause to punish Obstinate Prisoners that lye in Execution to receive the profits of there Estates, and Cheat their Creditors; the Judges to grant an Effligit against their Lands, for the Benefit and the Relief of the Creditors.

11. Whereas there is an Account betwixt the Prisoner and his Debtor, the Debtor rich and the other poor, he gets the Prisoner charged in Execution for that which he has paid him in part of Account as a Debt to the Damage of this just Creditor; for that reason the Prisoner giving in and assigning his just Debts to his Creditors, this rich Man may be one; his person shall be discharged for the present, but if ever after able, his Goods and Chattels and Person to be lyable.

12. The Creditors to have 40 Days notice by Summons, under the Hand and Seal of a Justice of Peace, to appear, that has charged him in Prison, and a better Method than by the irregular way of the *Gazette*, which will prevent many Perjuries, or their having New Credit, or Deceiving any person for the future.

13. The general Clause, as in other Acts, to endemnite the Judges and Justices that put this in Execution, and the Sheriffs and Gaolers for their Obedience thereunto.

14. That one Bound with another, though discharg'd, shall not Discharge the other Person.

15. That no Debtor to a Prisoner, or other Insolvent Person, after his Debt is entered in the Creditors Book, pay any Money to the Prisoner, or Insolvent Person, if he do, it's in his own wrong, and he must pay it again to the Creditors.

16. A proviso to perpetuate a Testimony

of a Debt due to a Prisoner for the good of the Creditors.

17. That no Person to be Discharged for any Fine or Offence against their Majesties King *William* and Queen *Mary*.

18. A Fine of a 100*l*. on the Gaoler to be paid to the Creditors, if he do not obey the Orders of the Justice of the Peace.

19. That no Commissioners of Bankrupts intermeddle with any Debtors, or their Debts after entered for the Creditors by this Act.

20. Its provided also, that the Judges, &c. settle and regulate the Goal and Goalers Fees, and that the Commissioners, &c. for charitable uses settle the Charity given to Prisoners, according to the true intent of the Donors.

21. If any relieved by this Act, refuse his Creditor a Judgment, to be levied on his Goods and Chatels to pay if able, to lose the whole benefit thereof.

22. If any person arrested for any Debt due before his Discharge, upon producing his Duplicate, and that he did give in his Estate to the Creditors, as the Act directs, and attested by the Book-keeper, the next Justice may discharge him.

23. To prevent escapes, in case the Justices should sit out of the Rules, to let the Gaoler go with the Prisoner to the Justice to be examined by the Creditors, and to observe the Justice's Orders and Commands, and to remande him back to Prison.

24. If any Prisoner or Insolvent Person forswear himself, he shall suffer, besides all pains and forfeitures of *Quinto Eliz.* for wilful Perjury.

25. And for other Insolvent or Absconding Persons, the Major part of two thirds in value to conclude the Minor; First, to prevent the Insolvent Person infallably from Cheating his Creditors. Secondly, To prevent any Kindred Creditors to joyn with the Insolvent Person. Thirdly, And to prevent the Creditors Cheating one another.

These Observations, and Reasons, are humbly offered to the Consideration of this Honourable Assembly, as inducements for a Bill for so publick a Service and Benefit to the Kingdom, which will be universally spread amongst all sorts of People to their Advantage, without hurt or injury to any; withal submitting to their great Wisdom to do therein as they think fit.



